

Attachment D

Watershed Management, General Plan Relationships and Basic Agreement Framework Issues and Suggested Approach

IV. Watershed Management

- F Include a commitment by the Sonoma County Water Agency (SCWA) to: (a) pursue a management/funding mechanism with responsible agencies that will result in implementation of a regional watershed restoration/maintenance plan, including protection of water quality, that is supported by funds from all benefited parties who should be partners in the restoration/maintenance effort (agriculture, municipalities that extract and/or discharge water, watershed urban development, forest harvesting, gravel mining, recreation, commercial/sport fishing, Mendocino County interests, etc.); and (b) aggressively seek state and federal funds. Provide for input to this process by the WAC and include a mechanism and commitment for water contractor's to pay their fair share of restoration/maintenance costs.

SCWA's Framework Issues pertaining to Watershed Management (from Attachment B to SCWA Water Policy Statement Draft of December 2002):

5. **Request the Water Contractors, Marin Municipal Water District (MMWD), Windsor, and other Russian River customers identify and take steps necessary to ensure that water supply, flood control, and sanitation activities within the Russian River watershed and other watersheds where listed fish species occur are conducted in a manner that is protective of listed fish species.** Under this provision, those entities receiving water under contract from the Agency would address potential impacts of their water supply, sanitation, and flood control activities on listed federal and state species. For example, if a contractor operates or manages facilities that are located on or adjacent to streams, waterways, or other water bodies that contain habitat for listed species, or operate facilities in a manner that has the potential to impact listed fish species, then those contractors would assess their activities, determine if Endangered Species Act (ESA) compliance activities are warranted, and initiate ESA compliance activities in response to federal and state requirements as needed.
6. **Request Water Contractors, MMWD, Windsor, and other Russian River customers to support recovery planning efforts for threatened salmonid species per the signed Memorandum of Understanding (MOU) for recovery planning between coastal California counties (including Marin and Sonoma), the NMFS, California Department of Fish and Game, and the U.S. Army Corps of Engineers, and to take such actions as are determined by the WAC to be necessary to support such recovery planning efforts.** Under this provision, The Agency would request that those entities contracting with the Agency for water supply support recovery planning efforts, including the policies and actions needed to achieve recovery of healthy and sustainable populations of salmon and steelhead within the North-central California Coast recovery planning domain. For example, contractors would assess their water supply, sanitation, and flood control operations for effects on listed fish species, and determine the actions and/or policies needed by the contractor to help in the recovery of listed fish species.

Activities may include stream restoration, fish passage projects, or other activities identified during the recovery planning process. In addition, contractors would also update master facilities plans, general plans, specific plans, and other plans as necessary to address policies and actions identified in those plans that could have the potential to impact listed fish species. For example, when updating a general plan, a contractor would: (1) assess the potential impacts on listed fish species based upon implementation of that general plan; (2) include policies in the general plan that protect listed fish species; (3) provide policies in the general plan that promote restoration and enhancement of critical habitat for listed fish species; and (4) initiate ESA compliance activities as needed to address the general plan's potential impacts on listed fish species, and obtain an incidental take permit as needed.

IX. General Plan Relationships

- CC Provide language that would address the need for accurate and uniformly applied forecast techniques for determining water required to meet general plans and provide a mechanism that does not require amendment of the agreement to adjust a forecast if found to be in error.
- DD Reword and strengthen provision regarding physical restriction of deliveries to assure that entitlements are protected.

XIV. Basic Agreement Concepts

- JJ Water contractors desiring to amend the agreement and willing to fund new improvement(s) should be able to proceed without the consent of all parties provided they pay all costs involved due to such amendment, such amendment does not interfere with delivery of entitlements to non-consenting party(s), and provision is made to include non-consenting party(s) at a later date provided sufficient capacity is available and, provided further that the previously non-consenting party(s) adequately compensate parties who paid for the improvement(s).
- JJ1 Regarding amendments to the new agreement, require signature of all parties. (Note: The WAC realizes that Item JJ and JJ1 are mutually exclusive but as of June 3 desires to carry both concepts forward and resolve same at a later date during negotiations.)
- KK Continue to include provision that WAC must approve any purchase of Potter Valley Project.
- LL Include consideration of Endangered Species Act impacts in the new agreement. If too much uncertainty exists at the time negotiations come to a close, consider language that will provide a procedure or mechanism for dealing with this issue in the future.
- MM Except in the case of expenditures made for emergency purposes, require that SCWA consult with and obtain WAC's comments on any expenditure greater than \$xxx,xxx that was not previously reviewed by WAC in annual budget process.

Suggested Approach

1. Regarding WAC Issue F, LL (and, because it fits here, WAC Issue “A” concerning Overarching Planning) and SCWA Issues 5 and 6, add a new initial section entitled “3.1 Planning and Watershed Protection” as follows at the beginning of “Part 3 – Water Supply”.

“3.1 Planning and Watershed Protection

(a) Providing ample opportunity for input from the public and the water contractors, the Agency shall take the lead to:

- (1) Periodically quantify the best possible water resource mix that optimizes provision of a reliable and economical supply of high quality water and related services while promoting a healthy environment that supports aquatic life and beneficial uses. Quantification shall include consideration of all available supplies including conservation, recycling, ground water and surface water; and, take into account levels of reliability (including the reliability of Eel River diversions), watershed needs and environmental impacts. Maximizing opportunities that will result in minimizing or avoiding environmental mitigation and restoration costs shall be a high priority. Funding to carry out the provisions of this subsection shall come from the Operation and Maintenance Charge.
- (2) Pursue development of and participate in implementation of a regional Russian River watershed restoration and maintenance plan with responsible agencies that will include protection of water quality. This effort should be supported by all benefited parties within the watershed of the Russian River system who should be partners in the restoration and maintenance effort; namely agriculture, municipalities that extract and/or discharge water, urban development, forest harvesting, gravel mining, recreation, commercial and sport fishing, Mendocino County, Sonoma County and other benefited parties. This effort should also be supported by benefited parties receiving water and other resources exported from the Russian River watershed. Funding to carry out the provisions of this subsection shall be sought and come from the following sources: state and federal grants and loans, responsible agencies, benefited parties enumerated in this subsection including appropriate use and transfer of various funds provided for by this agreement that are approval by the WAC.

(b) The water contractors, in addition to paying their fair share of costs for the efforts described in subsection (a) of this section, shall each examine the impacts of operation of water supply, sanitation, flood control and other public works under their jurisdiction for ways and means of complying with fish and wildlife protection and recovery laws including the Endangered Species Act (ESA) and implement those ways and means they determine are warranted to achieve compliance. These local activities should be carried out in a manner that is coordinated with, complimentary to, and supportive of the plan referred to in section 3.1 (a) (2).

(c) Water contractors who have the authority to create and promulgate a general plan shall, when creating or revising such plans:

- (1) Assess the potential impacts on listed fish species based upon implementation of that general plan;

- (2) Include policies in the general plan that protect listed fish species;
- (3) Provide policies in the general plan that promote restoration and enhancement of critical habitat for listed fish species; and
- (4) Identify ESA compliance activities as deemed warranted and needed to address the general plan's potential impacts on listed fish species, including whether there is a need to obtain an incidental take permit.

Water contractors who do not have the authority to create and promulgate a general plan shall provide information to responsible agencies that do have such authority regarding general plans that cover said water contractor's water service area(s). Such information shall have the goal of achieving the same objectives enumerated and set forth in this subsection.

2. Regarding WAC Issue CC, after the subsection in Part 3 that sets forth entitlements of the water contractors (currently denoted as 3.1 (a)), add a new subsection entitled "3.1 (b) Annual Limitation" as follows:

"3.1 (b) Annual Limitation

The annual limitation during any fiscal year set forth for each water contractor in section 3.1 (a) shall be determined based on the general plan(s) affecting the water service area of the water contractor. Calculation of water demand for each contractor shall include commonly accepted forecasting methodology consistently applied. Changes to the general plan or plans affecting a given water contractor shall be cause for revising the annual limitation and amending this agreement as provided for in section 1.6 (b)."

3. Regarding WAC Issue DD, change current section 3.3 (b) as follows:

"3.3 Deliveries in Excess of Entitlements

(b) The parties to this Agreement recognize that the Agency will have increased costs, in amounts that will be difficult to determine, if any water contractor takes water in violation of subsection (b), (c) or (d) of section 3.1 or subdivision (a) of this section. Accordingly, if any water contractor takes delivery of water from the Transmission System in violation of subsection (b), (c) or (d) of section 3.1 or subdivision (a) of this section, then it shall pay Agency, in addition to all other applicable charges, liquidated damages in an amount equal to 25 percent of the applicable Operation and Maintenance Charge times the amount of water taken in violation of these provisions. The assessment of liquidated damages pursuant to this section for a violation by a contractor of subsection (b), (c) or (d) of section 3.1 may be waived by the Agency upon a showing by the contractor that the taking of delivery of water in violation thereof resulted from an act of God or other unforeseeable circumstances over which the contractor had no control. The existence of this liquidated-damage provision shall not limit or restrict the Agency from physically limiting the quantity of water taken to the amounts authorized by this Agreement or from pursuing all other available legal and equitable remedies applicable to such violations. Upon determining that any customer connected to the aqueduct system is taking water in such a manner as to interfere with delivery of the entitlement amounts set forth in section 3.1 (a) to a

water contractor, the Agency shall take action to physically limit the water deliveries to such violating customer. The proceeds of any liquidated damages assessed pursuant to this subsection shall be deposited and paid out in the same manner as the proceeds of the Operation and Maintenance Charge.”

4. Regarding WAC Issues JJ and JJ1, change section 1.6 as follows:

“1.6 Amendments

- (a) Except as hereafter provided in this section, this agreement may be amended only with the consent of all the parties hereto. If such amendment reduces the revenues to be received by the Agency or otherwise impairs the ability of the Agency to meet its Revenue Bond obligations, then it shall be amended only with the consent of the Trustee. The Trustee shall give such consent if the Trustee determines that, following such amendment, the water contractors will be obligated under this agreement to make payments to the Agency sufficient to enable the Agency to pay principal of and interest on the Revenue Bonds and to meet all its other Revenue Bond obligations. In making such determination, the Trustee may rely upon such certificates or opinions from qualified attorneys, engineers or accountants as the Trustee may deem necessary and obtain from the Agency.
- (b) Any annual delivery limit contained in section 3.___ may be modified by written agreement between the Agency and the water contractor to which such annual delivery limit applies without the consent of the other parties to this agreement for the purpose of conforming such annual delivery limits to a general plan(s) which is applicable to the service area of such water contractor. Copies of any such written agreement shall be provided to all the parties to this agreement.
- (c) In the event a given aqueduct or aqueduct segment, storage facility, pumping plant, treatment facility, appurtenant and ancillary facilities or other project authorized by this agreement is revised to change the routing, location, configuration or capacity set forth in supporting documents available at the time this agreement was first approved, such revision shall be deemed approved and not require an amendment of this agreement, provided:
 - (1) The delivery of entitlement of any water contractor is not interfered with by virtue of such revision,
 - (2) The revision is approved by the WAC,
 - (3) The revision is approved by the Agency,
 - (4) The cost of the revision is paid for by the beneficiaries who approve the revision pursuant to funding and repayment arrangements contained in this agreement or special funding and repayment arrangements if deemed necessary by the WAC and Agency, and
 - (5) Appropriate compliance with environmental impact laws is achieved.

Said revision may include surplus capacity which may be made available to a water contractor who later requests and receives approval of the WAC to participate in the revision as a beneficiary provided such requesting water contractor makes arrangements satisfactory to the WAC which will, as

a minimum, recover a fair share of all costs appropriately allocated to said requesting water contractor.”

5. Regarding WAC Issue KK, retain the language of section 2.4 which is repeated here for your ready reference:

“2.4 Potter Valley Project

All or part of the Potter Valley Project may be acquired upon a determination by the Board of Directors of the Agency that such acquisition is necessary to insure the Agency's continued ability to make the water deliveries authorized by this Agreement, provided, however, that no part nor all of the Potter Valley Project shall be acquired without the prior approval of the Water Advisory Committee. The Agency shall not be liable to any of its customers for any damage resulting from any Agency decision regarding the acquisition or non-acquisition of any part or all of the Potter Valley Project.”

6. Regarding WAC Issue MM, change section 1.9 as follows:

“1.9 Water Contractors' Duty to Review Expenditures and Provide Funds

- (a) The WAC shall annually review the preliminary budget prepared by Agency staff and make recommendations to the Agency staff of proposed changes and thereafter make a recommendation regarding the budget to the Agency Board of Directors. Any subsequent expenditure not contained in the annual budget that exceeds \$500,000 shall require advance approval by the WAC unless said expenditure is determined by the Agency to be of an emergency nature.
- (b) Each water contractor shall use any and all means legally available to it (including, without limitation, the enactment and maintenance in effect of legislation establishing fees, tolls, rates and charges pertaining to the operation of its water distribution system) so as to produce monies sufficient in amount to meet the monetary obligations incurred by it pursuant to this agreement and to enable it to maintain its water distribution system in good working order.”